

**FILED**

**DEC 12 2005**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

CLAYTON LAMONT HOWARD,

Plaintiff - Appellant,

v.

BARB COONEY, Hearings Officer,  
Oregon State Penitentiary; et al.,

Defendants - Appellees.

No. 04-35953

D.C. No. CV-02-06280-ALH

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Oregon  
Ancer L. Haggerty, District Judge, Presiding

Submitted December 5, 2005<sup>\*\*</sup>

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Clayton Lamont Howard, an Oregon state prisoner, appeals pro se the district court's summary judgment for defendants in his 42 U.S.C. § 1983

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

action seeking declaratory and injunctive relief against prison officials. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's grant of summary judgment, *Barnett v. Centoni*, 31 F.3d 813, 815 (9th Cir. 1994) (per curiam), and review for abuse of discretion the denial of preliminary injunctive relief, *Johnson v. California State Bd. Of Accountancy*, 72 F.3d 1427, 1429 (9th Cir. 1995). We affirm.

The district court properly granted summary judgment for defendants because Howard failed to raise a genuine issue of material fact as to whether any of the defendants violated Howard's constitutional rights while investigating his possible involvement in a drug smuggling conspiracy violated Howard's constitutional rights. *See Saucier v. Katz*, 533 U.S. 194, 201 (2001) ("If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity.").

The district court did not abuse its discretion in denying Howard's motions for a temporary restraining order and preliminary injunction because Howard did not demonstrate any likelihood of success on the merits or a threat of injury. *See Johnson*, 72 F.3d at 1430.

We do not review the denial of Howard's motion for re-argument and/or reconsideration because Howard did not amend the notice of appeal to include the

district court's November 23, 2004 order denying his post-judgment motion.

Howard's motion for leave to file an addendum to the excerpts of record is granted.

**AFFIRMED.**